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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Application of: Michael M. Bellick, et al. Art Unit: 3673
Serial No.: 10/821,334
Filed: April 9, 2004
Confirmation No.: 9991
For: SLEEPING BAG WITH VENTED FOOTBOX
Examiner: Gay Spahn

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APPEAL BRIEF

Michael G. Munsell, Reg. No. 43,820
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

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APPEAL BRIEF

This is an appeal from the final rejection of the claims of the above-identified application made in the final Office action dated February 9, 2006. A Notice of Appeal was filed on May 8, 2006.

I. REAL PARTY IN INTEREST

The real party in interest in connection with the present appeal is American Recreation Products, Inc. of 1224 Fern Ridge Parkway, St. Louis, Missouri 63141, a corporation of the state of Delaware, owner of a 100 percent interest in the pending application. American Recreation Products, Inc. is a subsidiary of Kellwood Company of 600 Kellwood Parkway, Chesterfield, Missouri 63017, a corporation of the state of Delaware.

II. RELATED APPEALS AND INTERFERENCES

Appellants are unaware of any pending appeals or interferences which may be related to, directly affect or be directly affected by, or have a bearing on, the Board's decision in the pending appeal.

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PATENT**III. STATUS OF CLAIMS**

Claims 1-18 are currently pending in the application. A copy of the pending claims appears in the Claims Appendix of this Brief.

Claims 1, 2, 5, 6, 10-13, 15, 17, and 18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,881,405 (Garrigues) in view of U.S. Patent No. 6,175,976 (Cantwell).

Claims 10 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Garrigues in view of Cantwell and U.S. Patent No. 4,072,345 (Matsuda).

Claims 1-18 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cantwell in view of Garrigues.

Claims 10 and 15 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Cantwell in view of Garrigues and Matsuda.

The rejections of claims 1-18 under 35 U.S.C. §103(a) are being appealed.

IV. STATUS OF AMENDMENTS

AMENDMENT B AFTER FINAL was filed on March 22, 2006 to overcome the Examiner's objections to the drawings set forth on page 3 of the final Office action. Specifically, Figs. 1 and 3 were amended to show two slide fasteners, which are identified in the drawings by reference number "33". No amendments to the claims have been made after the final rejection.

The amendments to Figs. 1 and 3 have been entered. See paragraph 7 of the Advisory Action dated March 31, 2006.

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PATENT**V. SUMMARY OF CLAIMED SUBJECT MATTER**

The following summary correlates claim elements to specific embodiments described in the application specification, but does not in any manner limit claim interpretation. Rather, the following summary is provided only to facilitate the Board's understanding of the subject matter of this appeal.

The present invention is directed generally to a vented sleeping bag 1 comprising an elongate shell 5 defining an inner volume sized and shaped to receive a user therein. Page 3, lines 26-28, Figs. 1-4. The elongate shell 5 includes a head end 7, a foot end 9, left and right sides 11, 13 extending longitudinally of the shell. Page 3, lines 28-30, Figs. 1, 3, and 4. An overlying portion 19 is adapted to overlie the user, and an underlying portion 21 is adapted to underlie the user. Page 4, lines 18-21, Fig. 3. A fastener 20 selectively joins the overlying and underlying portions 19, 21 such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell 5 by the user. Page 4, line 35 through page 5, line 2, Fig. 3. At least one vent 3 in the overlying portion 19 of the shell 5 is located adjacent the foot end 9 of the shell between the left and right sides 11, 13 of the shell. Page 6, lines 27-34, Figs. 1-4. A closure 27 is selectively movable between a closed position for closing the at least one vent 3 and an open position for creating a vent opening 29 for ventilating the inner volume of the shell 5. Page 5, lines 20-36, Figs. 1 and 4.

In another configuration, the present invention is directed generally to a vented sleeping bag 1 comprising an elongate shell 5 defining an inner volume sized and shaped to receive a user therein. Page 3, lines 26-28, Figs. 1-4. The elongate

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shell 5 includes a head end 7, a foot end 9, left and right sides 11, 13 extending longitudinally of the shell. Page 3, lines 28-30, Figs. 1, 3, and 4. An overlying portion 19 is adapted to overlie the user, and an underlying portion 21 is adapted to underlie the user. Page 4, lines 18-21, Fig. 3. A fastener 20 selectively joins the overlying and underlying portions 19, 21 such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell 5 by the user. Page 4, line 35 through page 5, line 2, Fig. 3. At least one longitudinal vent 3 in the overlying portion 19 of the shell 5 is located between the left and right sides 11, 13 of the shell and extending longitudinally of the shell. Page 6, lines 27-34, Figs. 1-4. A closure 27 is selectively movable between a closed position for closing the at least one longitudinal vent 3 and an open position for creating a vent opening 29 for ventilating the inner volume of the shell 5. Page 5, lines 20-36, Figs. 1 and 4.

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

A. Appellants appeal the rejection of claims 1, 2, 5, 6, 10-13, 15, 17, and 18 under 35 U.S.C. §103(a) as being unpatentable over Garrigues in view of Cantwell.

B. Appellants appeal the rejection of claims 1-18 under 35 U.S.C. §103(a) as being unpatentable over Cantwell in view of Garrigues.

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VII. ARGUMENT

A. Claims 1, 2, 5, 6, 10-13, 15, 17, and 18 are patentable over Garrigues in view of Cantwell.

1. Claims 1, 2, 5, 6, 10, and 18

Claim 1 is directed to a vented sleeping bag comprising:

- a) an elongate shell defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user and an underlying portion adapted to underlie said user;
- b) a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;
- c) at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell; and
- d) a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

The sleeping bag of claim 1 is adapted for use in a wide range of temperatures, from cold to warm. When the vent is closed, the bag conforms to the contours of a user so that air movement within the sleeping bag is minimized making the bag thermally efficient (Fig. 1). Thus, the sleeping bag is well suited for use in colder ambient temperatures. When the vent is open, the internal volume of the shell is increased and a vent

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opening is created which allows communication with outside air and circulation within the bag (Fig. 4). Thus, the sleeping bag of the present invention is also well suited for use in mild to warm ambient temperatures.

In addition, the internal volume of the shell can be adjusted by opening and closing the vent, which allows the user to adjust the sleeping bag to conform to their fit preference. For example, if the user prefers a sleeping bag with less foot room (i.e., a mummy-type bag) the user can close the vent. However, if the user prefers more foot room (i.e., a rectangular bag) the user can open the vent.

Applicants submit that claim 1 is patentable over Garrigues in view of Cantwell in that these references fail to show or suggest a vented sleeping bag having at least one vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell.

Cantwell discloses a sleeping bag (10) having a slide fastener (30) for providing partial separation of the top section (24) from the bottom section (22) to allow easy entry and egress by the person using the bag. Cantwell fails to disclose or suggest a vent. Thus, Cantwell must fail to disclose or suggest at least one vent in the overlying portion of the shell.

As shown in Fig. 1, Garrigues discloses a bivouac sack (10) having a top (14), a bottom (12) and an end piece (16). A foot vent (40) in the end piece (16) cooperates with a vent duct (30) and a latitudinal opening (20) in the head end (18) to circulate air throughout the sack for venting and extracting internal moisture from the sack (10). Column 5, lines 7-30. The entire foot vent (40), as shown in Figs. 3, 4, and 7B, is disposed in the end piece (14), i.e., no portion of the foot vent (40) is

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positioned in the top (14) or bottom (12) of the sack (10). Thus, the top (14) of Garrigues' sack (10), which overlies the user, is free of the foot vent (40) in the foot end. In other words, Garrigues does not show or suggest a vent on the overlying portion of the shell (i.e., the portion of the shell adapted to overlie the user).

The Office has taken the position that Garrigues discloses a "vent system" (i.e., foot vent 40, vent duct 30 and latitudinal opening 20 considered collectively) and that this "vent system" is analogous to the "vent" recited in claim 1. Appellants disagree with this position.

Only the foot vent (40) by itself may be considered to be analogous to the claimed vent. The vent duct (30) and latitudinal opening (20) of Garrigues do cooperate with the foot vent (40) to form the "vent system" of Garrigues but characterizing the vent duct (30) of Garrigues as forming a part of the vent as recited in claim 1 is improper. Instead, the vent duct (30), which is the only part of the "vent system" that extends on the overlying portion, is a duct or tube that is in fluid communication with an opening (i.e., the foot vent (40)). Clearly, the vent as recited in claim 1 is not a duct or tube in fluid communication with an opening as is the vent duct (30) of Garrigues. Thus, characterizing the vent duct (30) of Garrigues as being analogous to the claimed vent, even in part, is improper.

A vent is "an opening or hole for the escape or passage of something (as of a gas or liquid) or for the relief of pressure within something (as a boiler)".¹ Emphasis added. Garrigues

¹ Webster's Third New International Dictionary Unabridged 2541 (2002).

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states that "[t]he foot vent 40 allows stagnant air within the foot end 17 of the bivy sack 10 to escape and fresher outside air to enter." See column 3, lines 43-44. Thus, Garrigues description of his foot vent is consistent with the dictionary definition of a vent. Neither support the Examiner's proposition that the vent duct of Garrigues is a vent.

Moreover, Garrigues states that "[t]he foot end 17 includes a foot vent 40 that is defined by edges of the top piece 14 and end piece 16." See column 3, lines 41 and 42 of Garrigues. Garrigues definition of the foot vent 40 is substantially the same as the definition of a vent set forth at page 5, paragraph 21 of appellants' specification. The specification states that "[t]he vent is defined by adjacent edges 35 of the shell which are joined together when the closure is in its closed position (Fig. 1)." Both Garrigues and the present applications state a vent is defined by edges, which define an opening or vent. In view of the two specifications, the foot vent (40) disclosed in Garrigues corresponds to the vent recited in claim 1.

As illustrated in Fig. 7B of Garrigues, the foot vent (40) is clearly not positioned on the portion of the shell adapted to overlie the user. Instead, the vent (40) of Garrigues is positioned on the portion of the sack adapted to be horizontally spaced from the feet of the user. Accordingly, Garrigues does not teach or suggest a vent in the overlying portion of the shell as recited in claim 1.

Both Garrigues and Cantwell fail to teach or suggest a vent in the overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell. Thus, the combination of Garrigues and Cantwell also fails to teach or suggest this element of claim 1. Since obviousness can only be established if every claim element is taught or

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suggested by the prior art², claim 1 is nonobvious and patentable over Garrigues in view of Cantwell.

Claims 2-10 and 18 depend directly or indirectly from claim 1 and are submitted to be patentable over the Garrigues in view of Cantwell for the same reasons as claim 1.

2. Claims 11, 12, 13, 15, and 17

Claim 11 is directed to a vented sleeping bag comprising, *inter alia*, at least one longitudinal vent in the overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell, and a closure selectively movable between a closed position for closing the at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

To the extent claim 11 includes the same recitations as claim 1, it is patentable for the same reasons. That is, neither Cantwell nor Garrigues whether considered alone or in combination teaches or suggests a vent in the overlying portion of the shell. Claims 12, 13, 15, and 17 depending from claim 11 are also submitted to be patentable.

B. Claims 1-18 are patentable over Cantwell in view of Garrigues.

1. Claims 1-10 and 18

Claim 1 is patentable over Cantwell in view of Garrigues for substantially the same reasons as set forth above with

² MPEP §2143.03 citing *In re Royka*, 180 U.S.P.Q. 580, 583 (C.C.P.A. 1974).

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respect to the rejection of claim 1 in view of the combination of Garrigues with Cantwell. That is, neither Cantwell nor Garrigues whether considered alone or in combination teach or suggest at least one vent in the overlying portion of the shell located adjacent the foot end of the shell.

In addition, the Examiner has taken the position that a pocket 32 disclosed by Cantwell is a "venting section" and that it would have been obvious to one skilled in the art to put Cantwell's "at least one venting section (32) on the overlying portion (24) of the shell (12) between the left and right sides (27, 27) as taught by Garrigues". See page 13 of the final Office action. Since claim 1 does not recite a vent section, appellants assume that the Examiner has taken the position that the pockets (32) of Cantwell are analogous to the vent recited in claim 1.

The pockets 32 of Cantwell are not a venting section or a vent as recited in claim 1. Such a characterization of the pockets (32) is arbitrary and is unsupported by the teachings of Cantwell. The pockets of Cantwell do not provide any openings for allowing air to enter or exit the interior of the sleeping bag. Rather, the pockets 32 allow the sleeping bag of Cantwell to be selectively convertible between a mummy-type sleeping bag (Figs. 1 and 3) and rectangular-type sleeping bag (Figs. 2 and 4).

In the context of responding to appellant's arguments, the Examiner expressly states that Cantwell "has not been relied upon to show a vent." See page 24, first sentence of the final Office action. This statement appears to be directly contrary to the Examiner's rejection based on Cantwell in view of Garrigues. No explanation is given for why Cantwell is asserted

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to have a vent for purposes of one rejection, but is not in another rejection.

Accordingly, claim 1 is patentable over Cantwell in view of Garrigues. Claims 2-10 and 18 depend directly or indirectly from claim 1 and are patentable for the same reasons.

2. Claims 11-17

Claim 11 is directed to a vented sleeping bag comprising, *inter alia*, at least one longitudinal vent in the overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell. There is also a closure selectively movable between a closed position for closing the at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

To the extent claim 11 includes the same recitations as claim 1, it is patentable for the same reasons. That is, neither Cantwell nor Garrigues whether considered alone or in combination teaches or suggests a vent in the overlying portion of the shell. Moreover, the pockets of Cantwell are not analogous to the vent recited in claim 11. Claims 12-17 depend from claim 11 and are also submitted to be patentable.

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For the reasons stated above, appellants respectfully request the Office's rejections be reversed and claims 1-18 be allowed.

Pursuant to M.P.E.P. §1207.04, Applicants believe that no fee is due in regard to filing this Appeal Brief. However, the Commissioner is hereby authorized to charge any fee due for filing this Appeal Brief to Deposit Account No. 19-1345.

Respectfully submitted,



Michael G. Munsell, Reg. No. 43,820
SENNIGER POWERS
One Metropolitan Square, 16th Floor
St. Louis, Missouri 63102
(314) 231-5400

MGM/PEB/clh

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CLAIMS APPENDIX

1. A vented sleeping bag comprising:

an elongate shell defining an inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user and an underlying portion adapted to underlie said user;

a fastener selectively joining the overlying and underlying portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

at least one vent in said overlying portion of the shell located adjacent the foot end of the shell between the left and right sides of the shell; and

a closure selectively movable between a closed position for closing said at least one vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

2. The sleeping bag as set forth in claim 1 wherein the at least one vent extends longitudinally of the shell.

3. The sleeping bag as set forth in claim 2 wherein the at least one vent extends longitudinally from generally about the

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foot end of the shell toward the head end of the shell a distance corresponding to about 10 to 50 percent of the overall length of the shell.

4. The sleeping bag as set forth in claim 3 wherein the at least one vent is about midway between the left and right sides of the shell.

5. The sleeping bag as set forth in claim 1 wherein the shell further comprises an end panel closing the foot end of the shell.

6. The sleeping bag as set forth in claim 5 wherein the at least one vent extends into the end panel of the shell toward the underlying portion of the shell.

7. The sleeping bag as set forth in claim 1 wherein the at least one vent is defined by adjacent edges of the shell, said edges being separable when the closure is in an open position to create said vent opening for ventilating the inner volume of the shell.

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8. The sleeping bag as set forth in claim 7 wherein the shell tapers toward the foot end of the shell when the closure is in its closed position, and wherein said edges of the shell defining said vent are separable when the closure is in an open position to expand the said inner volume of the shell adjacent said foot end of the shell.

9. The sleeping bag as set forth in claim 1 wherein the closure comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening.

10. The sleeping bag as set forth in claim 1 further comprising a mesh cover attached to the shell for covering the vent opening, said mesh cover collapsing within the shell when the at least one vent is closed.

11. A vented sleeping bag comprising:

an elongate shell defining a inner volume sized and shaped to receive a user therein, the elongate shell having a head end, a foot end, left and right sides extending longitudinally of the shell, an overlying portion adapted to overlie said user, and an underlying portion adapted to underlie said user;

a fastener selectively joining the overlying and underlying

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portions such that the overlying and underlying portions can be partially separated to allow entry into and exit out of the inner volume of the shell by the user;

at least one longitudinal vent in said overlying portion of the shell located between the left and right sides of the shell and extending longitudinally of the shell; and

a closure selectively movable between a closed position for closing said at least one longitudinal vent and an open position for creating a vent opening for ventilating the inner volume of the shell.

12. The sleeping bag as set forth in claim 11 wherein the shell further comprises an end panel at the foot end of the shell and wherein the at least one longitudinal vent is partially positioned within the overlying portion and the end panel.

13. The sleeping bag as set forth in claim 11 wherein the at least one longitudinal vent is located about midway between the left and right sides.

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14. The sleeping bag as set forth in claim 11 wherein the closure comprises a pair of slide fasteners for selectively adjusting the size and position of the vent opening.

15. The sleeping bag as set forth in claim 11 further comprising a mesh cover attached to the shell for covering the vent opening, said mesh cover collapsing within the shell when the at least one longitudinal vent is closed.

16. The sleeping bag as set forth in claim 11 wherein the at least one longitudinal vent is defined by adjacent edges of the shell, said edges being separable when the closure is in said open position for ventilating the inner volume of the shell.

17. The sleeping bag as set forth in claim 11 wherein said fastener is a slide fastener.

18. The sleeping bag as set forth in claim 1 wherein said fastener is a slide fastener.

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EVIDENCE APPENDIX

None.

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RELATED PROCEEDINGS APPENDIX

None.